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Conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 YOLANDA VON BRAUNHUT, individual,

4 Plaintiff,

5 v.

13 Civ. 642 ER RLE

6 BIG TIME TOYS, LLC,

7 Defendant.

8 -----x

9
10 February 2, 2017
11 10:42 a.m.

12
13 Before:

14 HON. EDGARDO RAMOS,

15 District Judge

16
17 APPEARANCES

18 WILLIAM TIMMONS,
19 Attorney for plaintiff

20
21 EPSTEIN BECKER & GREEN, PC (NJ)
22 Attorneys for defendant

23 BY: ANTHONY JOSEPH LAURA, Esq.
24 JEFFREY GREY KRAMER, Esq.
25 Of counsel

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1 (In open court)

2 (Case called)

3 THE COURT: Good morning, everyone. Please be seated.

4 This matter is on for a status conference. Discovery
5 has been closed now for some time. There was a motion granted
6 to allow for the amendment of the complaint and counterclaims.
7 So where are we? Are we here to set down a trial date?

8 MR. TIMMONS: Yes, we are, your Honor.

9 THE COURT: So let's talk about -- Mr. Laura, you
10 agree?

11 MR. LAURA: Your Honor, I would like to -- we have
12 spoken to an expert to opine on our counterclaim's value, which
13 is the difference between the trademarks as registered and as
14 unregistered, which is the essence of our damage in the amended
15 counterclaim. We would like to offer that expert report and
16 any deposition of that expert that might be warranted, and then
17 we would be ready for trial.

18 THE COURT: Mr. Timmons.

19 MR. TIMMONS: Well, I would like to say --

20 THE COURT: You can remain seated, by the way, if
21 you're more comfortable.

22 MR. TIMMONS: I think I am.

23 THE COURT: Just bring the microphone closer so we can
24 hear you.

25 MR. TIMMONS: Thank you.

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1 First I would like to wish the court and all those
2 present a Happy Groundhog's Day.

3 THE COURT: The same to you.

4 MR. TIMMONS: Groundhog's Day being the mid-point of
5 winter, the same was as Halloween is midday of autumn, and May
6 Day is the mid-point of spring. Happy Groundhog's Day,
7 mid-point of winter.

8 It has been a long time coming, but now we need to
9 move forward with selection of jury to resolve the issues
10 between the parties. Yolanda is here today. She is ready to
11 start as soon as this afternoon. I know that is not possible,
12 but we are ready to go.

13 The See Monkey product upon which this action is
14 centered on continues to this very day to be counterfeited in
15 China by none other than Sam Horwell, CEO of Big Time Toys.
16 The counterfeit has damaged and continued to damage the name
17 brand. The plaintiffs would like the court to know that
18 trademark renewals are coming due, that Yolanda is desperately
19 short on cash and that this case needs to be fast-tracked from
20 here on out.

21 To that end, I understand that there are pretrial
22 statements and jury instructions and motions in limine due. I
23 would like for the court to set short deadlines for the
24 production of those. If we are able to set a trial, I would at
25 least reserve some trial time today, I would like that to be

H22JVNOC

Conference

1 done separate and apart from whatever business that the
2 defendant wants to do with regards towards an expert report.

3 THE COURT: Okay.

4 MR. TIMMONS: In addition, I have talked about this
5 issue with Yolanda, and she has elected to forego the breach of
6 contract claim, leaving open only counts for trademark
7 infringement and for unjust enrichment as against the
8 defendant. We would like the court's permission to remove that
9 count from the action.

10 THE COURT: Any objection?

11 MR. LAURA: Obviously not, no, your Honor.

12 THE COURT: Then that that count will be dismissed.

13 MR. TIMMONS: Thank you.

14 THE COURT: Let me ask you, Mr. Laura, do you need --
15 it is your expert, correct? You can remain seated, too, by the
16 way, if you wish. Whatever makes you comfortable.

17 Why do you want him deposed?

18 MR. LAURA: I assumed once we issued the report, the
19 plaintiff may want him deposed. We would obviously offer that
20 up. We think the court would require it.

21 THE COURT: If he were to request it, but he wants to
22 move somewhat sooner. I think it would be in the nature of an
23 economist?

24 MR. LAURA: Actually, an intellectual property
25 professor who will opine on the value of these trademarks as

H22JVONC

Conference

1 registered and as not registered.

2 THE COURT: So any litigation with respect to him can
3 be dealt with by way of in limine practice?

4 MR. LAURA: Yes.

5 THE COURT: Let me ask you folk, how long will this
6 case take to try?

7 MR. TIMMONS: We anticipate it will be a Monday
8 through Friday affair at the maximum. So figure Monday or
9 Tuesday for jury selection, and then just jump right into
10 opening.

11 THE COURT: You figure Monday morning for jury
12 selection?

13 MR. TIMMONS: Right. Then by Friday we anticipate it
14 should be done if not before then.

15 THE COURT: Okay. Mr. Laura.

16 MR. LAURA: We believe this can be tried in a week's
17 time as well. I'd like to propose to the court and to the
18 plaintiff's counsel, we had a session with Judge Ellis probably
19 two years ago now on whether this case was settleable.

20 I would prefer -- and I know plaintiff's counsel has
21 advised us that money is very tight there -- our client would
22 prefer not to have to spend money on even the pretrial
23 submissions, if we can have a mediation session relatively
24 quickly with either a Southern District mediator at no cost to
25 the parties or a retired judge that we would be willing to pay

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Conference

1 for a day's worth of mediation. We would like to try to set a
2 mediation date before we all go through the expense of the
3 pretrial papers being prepared.

4 THE COURT: Mr. Timmons, do you think that such an
5 exercise would be fruitful?

6 MR. TIMMONS: With all due respect to defendant's
7 counsel, I believe that we have explored all settlement
8 options. We were very open to anything, but they're not even
9 close towards what we think is a proper resolution of this
10 case, so we would respectfully decline any kind of attempt at
11 settlement at this posture, and we just want to get to the end
12 game here because time is of the essence.

13 Yolanda is now, the effect of this being severed from
14 her property is now really reeking havoc on her personal life
15 in a sense, so we need to get this set for trial as soon as
16 possible.

17 THE COURT: I think I will confer with Ms. Rivera, but
18 there may be some availability in May or June of this year. Do
19 we have a week?

20 THE CLERK: May 1, Monday, May 1.

21 (Off-the-record discussion)

22 THE COURT: Let's set it down for May 1 which, as you
23 know, is the midway point.

24 MR. TIMMONS: It is May Day, may Day, mid-point of
25 spring. It is a holiday in Europe, not so much in the states.

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1 There is no mid-summer holiday, ironically.

2 THE COURT: Okay.

3 MR. LAURA: We have no objection to May 1 as of today.

4 I likely will be unavailable, but I will confer with
5 one of my partners to see if she can try the case that week for
6 us. In the event that both of us are unavailable on that date,
7 if there is a time before the end of May or the end of June, I
8 don't want to go beyond what everybody is anxious --

9 THE COURT: Obviously, this case has been sitting
10 around for a little bit, we'll want lawyers who are up to speed
11 on the facts and the procedural history. Let's go with that
12 date. If you encountered difficulties, contact Chambers and
13 we'll find another agreeable date.

14 Obviously, we'll schedule some things now, but we are
15 talking about an eight-person jury, correct? Typically, that
16 is what I use for civil matters.

17 MR. TIMMONS: What?

18 THE COURT: An eight-person jury, eight people.

19 We will, working backwards from May 1, require the
20 parties on April 1 to submit proposed voir dire questions,
21 proposed jury instructions, proposed verdict sheet and any in
22 limine motions, and also submit the joint pretrial order in
23 accordance with my individual rules two weeks after that, so on
24 April 15, and that may be a weekend at this point.

25 THE CLERK: April 1 is a Saturday.

H22JVNOC

Conference

1 THE COURT: So the following Monday.

2 THE CLERK: So April 3, and two weeks from April 3 is
3 April 17th.

4 THE COURT: By April 17 the responses to the other
5 party's submissions, so opposition to motions in limine,
6 objections to voir dire questions, jury instructions, et
7 cetera, and we'll have a final pretrial hearing on the Thursday
8 prior to trial.

9 THE CLERK: April 27th, at 3:00 p.m.

10 THE COURT: So we'll have the final pretrial that
11 Thursday, at 3:00 p.m., and jury selection and trial to begin
12 Monday, May 1st.

13 MR. TIMMONS: Excellent.

14 THE COURT: Is there anything else we need to do
15 today, Mr. Timmons?

16 MR. TIMMONS: I wanted to clarify voir dire, jury
17 instructions and pretrial statement. Is there anything else
18 due on the 3rd?

19 THE COURT: Proposed voir dire questions, proposed
20 verdict sheet, motions in limine and --

21 THE CLERK: Joint proposed pretrial order?

22 THE COURT: Joint pretrial order.

23 MR. TIMMONS: Then you said it is an eight-person
24 jury?

25 THE COURT: An eight-person jury, yes.

H22JVONC

Conference

1 MR. TIMMONS: No other objection.

2 8 but not 12?

3 THE COURT: We can do 12, but we don't need 12. We
4 can do two alternates.

5 MR. TIMMONS: Can we have two alternates?

6 THE COURT: Fine, we can have two alternates instead.

7 MR. LAURA: Nothing else, your Honor.

8 THE COURT: We are adjourned.

9 (Court adjourned)

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